



**COUNCIL OF
THE EUROPEAN UNION**

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**TRANS 203
MAR 53**

“A” ITEM NOTE

from: General Secretariat
to: Council

No. prev. doc.: 8770/13 TRANS 178 MAR 48

No. Cion prop.: 8378/13 TRANS 152 MAR 38

8380/13 TRANS 153 MAR 39

Subject: – Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, at the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to conventions and protocols

– Proposal for a Council Decision on the position to be adopted on behalf of the European Union at the 65th session of the Marine Environment Protection Committee of amendments to the Condition Assessment Scheme and at the 92nd session of the Maritime Safety Committee of amendments to the International Safety Management Code and amendments to SOLAS chapter III and the High Speed Craft Codes 1994 and 2000 concerning enclosed space entry and rescue drills

– *Establishment of EU positions*

1. The two above-mentioned proposals, which the Commission transmitted to Council on 16 and 17 April 2013, aim at establishing Union positions in relation to the adoption of certain new instruments and several amendments to existing international instruments at upcoming meetings of committees to the International Maritime Organization (IMO).

2. Following discussions at the Shipping Working Party, COREPER on 2 May 2013 examined the two proposals and, after having solved the outstanding issues, decided to submit them to COUNCIL for adoption. The texts of the two proposals, as revised by the lawyer-linguists, are reflected in documents 8763/13 TRANS 177 MAR 47 OC 242 and 8759/13 TRANS 176 MAR 46 OC 241 respectively.
3. The UK delegation indicated it still has a parliamentary scrutiny reservation on the above texts.
4. At COREPER several delegations and the Commission announced their intention to submit statements to the minutes of Council. These statements are reflected in the Annex to this note.
5. The Council is, therefore, invited:
 - to adopt the two Council Decisions as reflected in the documents mentioned in paragraph 2;
 - to take note of the above statements, which will be inserted in the Council minutes.

Statement by the Commission

"The Commission regrets that the Council excluded from the scope of the Decision the amendment to the Supplemental A and B Forms to the International Oil Pollution Prevention (IOPP) Certificate, which are required by international law to be kept on board of the ships. Given that Directive 2009/16/EC requires the Port State Control officers to check these specific forms in their up-to-date version, the Commission considers that the suggested amendment affects Union law."

Statement by the Netherlands

"In order to safeguard the interests of the European Union, the Netherlands votes in favour of the proposed Council Decision on the position to be adopted, on behalf of the European Union, at the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to Conventions, as well as of the proposed Council Decision on the position to be adopted on behalf of the European Union at the 65th session of the Marine Environment Protection Committee of amendments to forms A and B of the International Oil Pollution Prevention Certificates and amendments to the Condition Assessment Scheme and at the 92nd session of the Maritime Safety Committee of amendments to the International Safety Management Code and amendments to SOLAS chapter III and the High Speed Craft Codes 1994 and 2000 concerning enclosed space entry and rescue drills.

While the Netherlands is in favour of a pragmatic approach according to our duty of loyal cooperation and to safeguard the interests of the European Union, this vote in this specific case, cannot be interpreted as a relinquishment of our original position in the case pending. Neither does this set a precedent for similar cases where the competence for external representation has become an issue.

It should therefore be made abundantly clear that the arrangements under this proposal are without prejudice to the division of competences between the European Union and its Member States and that this vote cannot be interpreted in any way as an acceptance of article 218(9) TFEU as an appropriate legal basis for these Council Decisions."
